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Type: Request for Rehearing -

Serial No. 09/939,482

Filing Date: September 10, 1999

Inventor: Jerry H. Chisnell

Enclosing: Request for Rehearing, Fee Transmittal Form, Transmittal,
postcard

Attorney: ~~Doyle~~ LFTP139A US

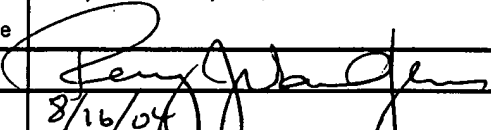
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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/939,482
	Filing Date	September 9, 1999
	First Named Inventor	Jerry H. Chisnell
	Art Unit	
	Examiner Name	
Total Number of Pages in This Submission	Attorney Docket Number	FTP139A US

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance communication to Technology Center (TC)
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<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	VanOphem & VanOphem, P.C.
Signature	
Date	8/16/04

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FEE TRANSMITTAL
for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$)

Complete if Known

Application Number	09/939,482
Filing Date	September 9, 1999
First Named Inventor	Jerry H. Chisnell
Examiner Name	
Art Unit	
Attorney Docket No.	FTP139A US

METHOD OF PAYMENT (check all that apply)
☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None
☒ Deposit Account:Deposit Account Number
Deposit Account Name

22-0212

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Credit any overpayments☒ Charge any additional fee(s) or any underpayment of fee(s)☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1)				(\$)	

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Extra Claims	Fee from below	Fee Paid
	-20** =	X	
Independent Claims	-3** =	X	
Multiple Dependent			

Large Entity		Small Entity		Fee Description
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	18	2202	9	Claims in excess of 20
1201	86	2201	43	Independent claims in excess of 3
1203	290	2203	145	Multiple dependent claim, if not paid
1204	86	2204	43	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent
SUBTOTAL (2)				(\$)

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	2053	130	Non-English specification	
1812	2,520	2812	2,520	For filing a request for ex parte reexamination	
1804	920*	2804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	2805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	
1403	290	2403	145	Request for oral hearing	
1451	1,510	2451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	2460	130	Petitions to the Commissioner	
1807	50	2807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	2806	180	Submission of Information Disclosure Stmt	
8021	40	28021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	2802	900	Request for expedited examination of a design application	

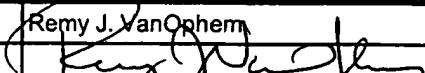
Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$)

SUBMITTED BY

(Complete if applicable)

Name (Print/Type)	Remy J. VanOphem	Registration No. (Attorney/Agent)	27053	Telephone	586 739-7445
Signature		Date	8/6/04		

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PATENT APPLICATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. 09/939,482
343

Appeal No. 2004-1326

Filing Date: September 9, 1999

Inventor: Jerry H. Chisnell

Title: Use of a Single or Multiple Ring Strategically Placed in a Hose Coupling to Reinforce Material Against Collapse

* * * * *

REQUEST FOR REHEARING
UNDER 37 CFR §1.197(b)

Board of Patent Appeals and Interferences
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellant respectfully requests from the Board of Patent Appeals and Interferences (Board), a rehearing and reconsideration of the Board's affirmance of the Examiner's rejection of claims 1-5, 11 and 12 in the present appeal proceeding. Appellant acknowledges receipt of the decision of the Board mailed on June 15, 2004.

By this request, Appellant desires to avoid a mere reargument of Appellant's position on appeal and desires to narrow and simplify Appellant's arguments to facilitate the Board's reversal of the rejections. Therefore, Appellant herein states with particularity only the points of law and fact believed to have been misapprehended or overlooked in rendering the decision. Nonetheless, Appellant hereby incorporates by reference the arguments previously submitted in Appellant's main brief on appeal.

Appellant notes that the Board sustained the Examiner's rejection of Appellant's claims 1-5, 11 and 12. The only other claims in the application are claims 6-10, which stand allowed.

Appellant asserts that claims 1-5, 11 and 12 are not anticipated by Joseph et al. as a matter of law and facts. Appellant respectfully asserts that the Board has erroneously misinterpreted the language of Appellant's independent claims on appeal and has misidentified the precise structural interrelationships of the mechanical elements disclosed in Appellant's application.

Appellant recognizes that during examination proceedings, claims are to be given their broadest reasonable interpretation, consistent with the specification. *See In re Hyatt*, 211 F.3d 1367, 54 USPQ2d 1664 (Fed. Cir. 2000). Appellant notes that the legal standard for anticipation requires the presence in a single prior art reference, disclosure of each and every element of the claimed invention, arranged as in the patent claim. *See Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984). Moreover, to hold that the single prior art reference anticipates the patent claim, the Board must expressly find that every limitation in the claim is identically shown in the single prior art reference. *See Gechter v. Davidson*, 116 F.3d 1454, 1460, 43 USPQ2d 1030, 1035 (Fed. Cir. 1997).

Specifically, the Appellant requests reconsideration of the decision by the Board for the reasons that it appears from the opinion set forth, that the Board has misinterpreted the Appellant's remarks specifically with respect to the claim language which clearly defines the location of the reinforcing ring with respect to the unambiguous language of each of the independent claims. The independent claims 1 and 12 each require that the outer sleeve has "at

least one depression therein” formed by a crimping operation, “said at least one depression defining an area of peak crimp force of a predetermined longitudinal extent” and further, that “at least one reinforcing ring positioned within said inner diameter of said inner sleeve within said predetermined longitudinal extent defined by said area of peak crimp force.”

On page 4 of the Opinion, the Board concludes that this language does not limit the position of the enforcing ring entirely within the predetermined longitudinal extent defined by the area of peak crimp force. With reference to Appellant’s Brief at page 7 thereof, the ordinary and accustomed meaning of the claim term “within” was carefully set forth. Note that the definition that the ordinary and customary meaning of this term as set forth at page 7 of Appellant’s Brief, leaves no room for ambiguity in that if an element is inside the bounds of a region it is in within the region, and conversely if the element is outside the bounds of a region it is not within the region. Accordingly, the using of the claim term “within” a predetermined longitudinal extent defined by an area of peak crimp force does indeed require that the ring be positioned entirely, rather than partially, “within said predetermined longitudinal extent.”

It is obvious that the Board completely neglected this clear representation of the unambiguous meaning of the term “within” in order to justify its conclusion that the reinforcing ring is positioned partially “within said predetermined longitudinal extent defined by said area of peak crimp force,” (Claim 1). Although the term “entirely” is not used, there is absolutely no question that the unambiguous meaning of this claim language requires that the reinforcement ring be located entirely within the predetermined longitudinal extent defined by the area of peak crimp force. Therefore, in viewing the structure (and not function) of the Joseph et al. reference, there is absolutely no doubt to a person skilled in the art that the liner 28 as disclosed by Joseph et al. does not in any way reside entirely within the predetermined

longitudinal extent defined by an area of peak crimp force. It is absolutely clear to a person skilled in the art that the crimping force is significantly reduced beyond the depression caused by the crimping operation. Accordingly, a person skilled in the art will quickly recognize there is absolutely no need to utilize a reinforcing ring which extend outside of the area of peaked crimp force as is structurally disclosed in the Joseph et al. reference. The liner 28 extends well beyond the depressions made by the crimping operation and accordingly, that portion of the liner has absolutely no effect in terms of reinforcing the inner sleeve of the coupling and is waste in terms of costs and weight considerations. It is this precise point that is made very clear by the language in Appellant's claims to structurally define unambiguously over the structure disclosed in the Joseph et al. reference.

It is clearly understood by the Appellant that during examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification. However, I believe the Board went beyond reasonableness by interpreting Appellant's independent claims completely inconsistent with the Appellant's specification and drawing disclosure. After all, it is clear that neither Appellant's specification nor drawings show disclosure wherein the reinforcing rings 20 extend beyond the longitudinal extent of the depressions caused by the crimping operations. Apparently the Board feels that Figure 2 which shows three crimping grooves is its justification for determining that the independent claims should be interpreted as encompassing an embodiment wherein the reinforcing ring is partially positioned within the predetermined longitudinal extent defined by the area of peak crimp force. This is completely inconsistent with the clear disclosure set forth on page 9 of the specification which unambiguously sets forth that the crimping method also creates an area of peak crimp force 36 that ordinarily results in narrowing or collapsing of the inner sleeve 40.

Please note in Figure 2 that reference character 36 designates this area of peak crimp force and both reinforcing rings are well within the predetermined longitudinal extent defined by the area of peak crimp force 36. Also note that on page 9 the disclosure further sets forth that “that corresponding reinforcing link 20 is then designed and strategically placed inside the inner sleeve concentric with a predetermined area of peak crimp force 36. Accordingly, the Board incorrectly, interprets the illustration of Figure 2, in that, Figure 2 is completely consistent with the language of the claims such that the reinforcing rings are indeed entirely contained within the predetermined longitudinal extent defined by the area of peak crimp force. Clearly in Appellant’s disclosure the reinforcing ring does not longitudinally extend across the entire area of the inner sleeve as is clearly disclosed in Joseph et al. Accordingly, the unambiguous language that sets forth that the reinforcing ring must be entirely within the predetermined longitudinal extent defined by the area of peak crimp force is indeed not only supported in the unambiguous language of the specification but also clearly illustrated in Figure 2. To conclude that, even with the narrow interpretation of the independent claims, the independent claims define a coupling product which is indistinguishable from the coupling product of Joseph et al. with respect to the feature or characteristic under consideration is entirely incorrect because the rejection is one of anticipation and not one of obviousness. Clearly, the objective of the coupling of Joseph et al. as well as Appellant’s objective are similar, in that, each attempts to provide reinforcement to the inner sleeve of the coupling. The difference lies in how this reinforcement is accomplished structurally so as ensure integrity and long term durability of the coupling. For the Board to conclude that even if it interpreted the independent claims narrowly the appealed independent claims would define a coupling product which is indistinguishable from the coupling product of Joseph et al. with respect to the feature or

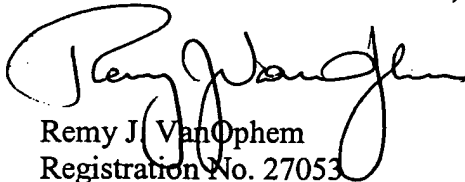
characteristic under consideration, namely, the ring being positioned entirely within the longitudinal extent defined by the area of peak crimp force is absolutely incorrect based not only on the clear unambiguous claim language but also the disclosure itself when viewed by a person ordinarily skilled in the art.

It is clear to a person ordinarily skilled in the art that prior art reinforcements such as those shown in Joseph et al. undergo beam deflection during a crimping operation while reinforcing rings which are strategically located only where absolutely necessary that is, in the area of peak crimp force undergo virtually no beam deflection whatsoever. Such conclusion need not be based on an affidavit but is clearly well within the realm of an ordinary engineer who designs the type of couplings discussed in both Joseph et al. and Appellant's disclosure. Therefore, Appellant does not believe it is necessary that proof be submitted with respect to the manufacturing of these products because the Patent Office is unable to manufacture such products or to obtain or compare prior art products. Certainly, even if they were able to do that the decision is not with the Patent Office to make such comparison but the decision lies with the person skilled in the prior art of couplings to determine whether the structures associated with each of the couplings would indeed provide the advantages disclosed in each of the specifications. Frankly, the specification speaks for itself and to a person of ordinary skill in the art and it does indeed clearly set forth the structural requirements of the invention which provide the advantages associated therewith. On page 7 of the Decision, the Board concludes by setting forth functional features which are provided by the prior art indicating that these are similar to Appellant's coupling. Frankly, it is clearly understood that functionally I believe that Appellant and the prior art are attempting to acquire a more structurally sound coupling that does not collapse during crimping. Accordingly, Joseph et al.

has been mentioned as the prior art in the background of the current specification as providing an aluminum tubular liner. Accordingly, it is well recognized by the Appellant that the functional aspects of this coupling are identical in both the prior art as well as Appellant's specification. The issue frankly is one of anticipation and accordingly, the fact that the functional features are identical should have absolutely no weight with respect to an anticipation argument. Accordingly, it is respectfully requested that for the reasons set forth above, that this honorable Board reconsider its position with respect to the rejection of claims 1-5, 11 and 12 as being anticipated by Joseph et al.

Respectfully submitted,

VANOPHEM & VANOPHEM, P.C.

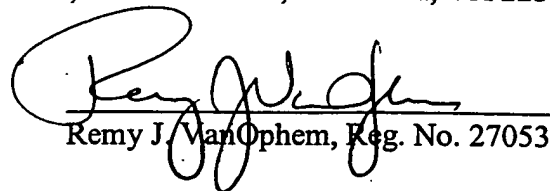


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Remy J. VanOphem, Reg. No. 27053